

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH MUBARAK
BIN 'ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI

DECLARATION OF SSG BRENT SKEETE

I, the undersigned, swear or affirm that the following facts are true to the best of my knowledge:

1. My name is Brent Skeete, SSG, United States Army. From November 2015 to 7 December 2018 I was a paralegal detailed to the defense team representing Mr. bin 'Atash.
2. On or about 10 December 2018, I temporarily moved to Killeen, TX to assist my family who had already relocated from the National Capital Region. I am scheduled to PCS to Korea on 16 January 2019, and we moved from Woodbridge, VA so that my wife and children would be near family.
3. On 18 December 2018, I took my personal truck to the repair shop in Killeen, TX for repairs and was provided a rental car: a Chevy Impala.
4. On 20 December 2018, between 0900 and 1000 CST, I received a call on my personal cell phone from a man who identified himself as Mr. Andy Stafford from Army Counterintelligence. Mr. Stafford told me that the U.S. Army mandated that he brief me before I could PCS to Korea. Mr. Stafford directed me to come to his office on Fort Hood that afternoon.

Fort Hood is located in Killeen, TX. Mr. Stafford told me to report to Building 2811 on Battalion Avenue at 1330 CST.

5. I was surprised by Mr. Stafford's call and the required briefing because I am a paralegal and I was told that I was going to military justice in Korea. I had already completed all of my required Korea PCS training in the National Capital Region and had been told I was good-to-go.

6. After Mr. Stafford's call, I made a plan to drop off my son's trumpet at his middle school, then to stop by Fort Hood library to check my military email. I needed to review and sign my NCOER (non-commissioned officer evaluation report) before heading to the briefing.

7. When I left my house at around 1200 CST, I noticed a truck outside my home with a man taking pictures. It was a white Dodge Ram Pickup with TX Tag# DRW-6318. One white male was in the driver's seat; he was bald and in his late 30s to late 40s and he was taking pictures of my home with his cell phone.

8. When the white male noticed me watching him taking pictures, he quickly lowered the phone camera and immediately drove off. I got in my rental car and followed him. The white male drove down the street about a ¼ mile, parked and got out of his pickup. The man disappeared between two houses toward the backyard. I noted his tag number and photographed the truck. I did not pursue him. I set off for my son's school.

9. I drove to Roy J. Smith Middle School to drop off a trumpet for my son. During my drive to the middle school, I noticed a white Dodge Caravan driving behind me. The white Dodge Caravan did not follow me into school parking lot. I did not see where it went.

10. I dropped the trumpet at the school and left the middle school. I made a right turn onto W Stan Schuleter Loop and headed toward the Main Gate of Fort Hood. Then, I realized the

Main Gate was out of my way. I decided to do a U-turn and enter Fort Hood via Clear Creek Gate. When I made the U-turn on W Stan Schuleter Loop, I noticed that the white Dodge Caravan I had seen earlier made a U-turn behind me and was following me again.

11. I drove to the Clear Creek Gate. At the gate, as I gave the gate guard my military identification (CAC) through the driver's window, I was startled by a Staff Sergeant coming to the front of my rental car from the right yelling "Stop!". The SSG whose name I could then see was named SSG Tutt. He was holding a folded piece of paper and claimed that I had been selected for random inspection.

12. Although the guard at the gate already had my CAC, SSG (FNU) Tutt demanded my driver's license and told me to pull over to the side for an inspection. The gate guard and a PFC joined SSG Tutt and told me to open all of the compartments in my car. SSG Tutt took the piece of paper that he had been holding and walked to the back of my rental car. SSG Tutt compared my tag to the writing on the piece of paper. He appeared to have my rental car tag number on the piece of paper.

13. I received a call from my wife as I got out of my car. The SSG and two PFCs searched my car. Then, they asked me to open up my backpack so that they could search that. This surprised me because normally a car inspection does not involve bag searches. I complied and they searched my backpack. My wife could hear all of this on the phone and remarked that it was odd. I told her about all of the strange issues that had happened so far that day.

14. After they searched my backpack, two more people arrived: one in a civilian police uniform and one in military uniform. There were a total of five people now involved in this "random" car inspection. The five people talked for a bit and, after a few minutes, I was told that I was free to go.

15. I went to the Fort Hood library, checked my email and signed my NCOER.

16. After the trip to the library, I went to Building 2811 on Battalion Avenue. Outside the building is a sign that reads "Military Counterintelligence." I had never been to this building before.

17. I went inside the building at about 1315 and was told to leave my cell phone by the door. Mr. Stafford told me that "because of the types of interviews we've done this week, we have to wand you. We've had two people come in this week with concealed weapons." I was wanded. I thought that was strange and, combined with the other incidents of the morning, had me worried. I was beginning to think this would not be a briefing after all.

18. Mr. Stafford escorted me into a room. Right away, I recognized it as an interrogation room. It contained only one table and four chairs, water bottles on the table, and a two-way mirror. Two white men were inside room waiting. Both wore black suits, with white shirts, and black ties. Both men were Caucasian. One was bald, in his mid-40s, about 6'1" tall with a muscular build named "Chris". I do not know his last name. The other was in his early-to-mid-30s, about 5'10" tall with a runner-type build and short brown hair. I do not know his name. They identified themselves as Special Agents with the Federal Bureau of Investigation. They flashed me their FBI credentials.

19. The two agents said they were there to ask me questions. They showed me a form called something like a "Classification Acknowledgement Agreement" and another typed piece of paper notifying me that lying to FBI agents was a crime. They told me they had to draft the notice after what happened with Michael Flynn. I immediately signed the "General Flynn warning" but wanted more information about the other form. I told them I would not provide them any classified information. They said that was fine, and later in the interrogation, after they

provided more information, I signed the "Classification Acknowledgement Agreement". The agents did not give me copies of either document.

20. I sat in the seat I was escorted to. It was facing a two-way mirror. Mr. Stafford and the two FBI agents were on the sides of the table facing me so their backs faced the two-way mirror.

21. The FBI agent named Chris asked me most of the questions; the other FBI agent also asked questions but took notes as well. Agent Chris LNU began by asking me questions about my family and talking about my personal life. Both agents claimed they were former Marines. Agent Chris LNU asked about my deployments to Iraq and Kuwait. Both agents were trying to engage me. They were clearly trying to establish some sort of rapport with me and gain my trust.

22. After the introductory conversation, I asked "What is this all about?" The discussion then turned. The FBI agents beat around the bush but eventually told me they wanted to talk about my time on the bin 'Atash case. At first, Agent Chris LNU would not ask me directly about my work on Mr. bin 'Atash's case. He wouldn't name the case but would say "You, know...we want to know about your other job." I responded that I could not talk much about my time as a paralegal on the bin 'Atash case because it was attorney-client privileged and I had signed a non-disclosure agreement. When I refused to answer a question, Agent Chris LNU responded something like "of course," but would ignore my answer and attempt to ask the same question a different way. This happened over and over.

23. I got the sense that the agents were attempting to convince me that we shared common experiences and beliefs; they kept referring to our common experiences including similar military experiences. The agents had a folder of material sitting on the table. They pointed to it and told me they had researched me. The agents told me they had tried to find me first by going

to my house in Woodbridge, VA. They said they looked for me there on the previous Thursday, one week earlier. I told them I had moved from there some time ago.

24. The agents knew and introduced the fact that I had been awarded the Defense Meritorious Service Medal (“DMSM”). They asked how I had received it. Agent Chris LNU asked me “What did you do to get that high of an award?” I told the agents that for some time on the team I had been the only paralegal, and that’s why I got the DMSM. The agents then referred to citation, the form DA-638, the form submitted by my team nominating me for the DMSM. They had read the citation and confronted me with language describing my work on the team. They knew I had taken multiple trips to Naval Station Guantanamo Bay to meet with our client and attend pretrial hearings. Agent Chris LNU pushed me for more detailed information regarding my work for Mr. bin ‘Atash and I explained that I did invoices, travel, helped with motions, and other paralegal stuff.

25. At one point during the interrogation, the FBI agents said that people had told them that I would be a good person to talk to because I had met with the client regularly. This fact was repeated by the agents at least three times during the interrogation. Agent Chris LNU asked me to give him details about what he called the “debrief meetings” we would have with counsel for Mr. bin ‘Atash after each meeting with Mr. bin ‘Atash. The agents wanted to know what I told the attorneys and what the attorneys told me, and about the content of my meetings with my client. I found this questioning very troubling because the agents should not have known about our defense team practice of “debrief meetings”. It was clear that someone had told them about how Mr. bin ‘Atash’s team operated.

26. Agent Chris LNU asked me questions like, “Why did the client want to talk to you?” I told them that I think he met with me because I am a Muslim. I explained that I had converted in

2013 while in Kuwait and we would talk a lot about religion. Agent Chris LNU asked, "Did the client ever try to radicalize you?" I thought that question was crazy and told them, "No".

27. Agent Chris LNU also asked about the civilian attorneys for Mr. bin 'Atash. He asked what they did and for their names, among other things. I told them: Ms. Cheryl Bormann, Mr. William Montross, and Mr. Edwin Perry. Agent Chris LNU asked me to name the experts that we used on the team. I responded that this subject was attorney-client privileged. Agent Chris LNU then asked me about the military counsel. He seemed to know that there were military counsel and he didn't ask their names so I assumed he knew them. Chris LNU asked what roles the military counsel have on the case. I said they were just military counsel.

28. Agent Chris LNU asked about Mr. bin 'Atash's relationship with the Guantanamo Camp 7 guards and whether there were any guards in particular my client liked. I told him the guard force information was classified and I couldn't talk about it. Agent Chris LNU also asked about detainee movements. I repeated that I couldn't talk about that.

29. Agent Chris LNU asked many questions like: "You meet with the client the most, who else is close with the client?"; "Why did client take a liking to you?"; "How is his relationship with the team?"; and "How does he get along with the lawyers?". I responded that I could not answer those questions because they were subject to attorney-client privilege.

30. The FBI agents would not take my answers and move-on. When I told them I could not answer something, they would change the subject to something to win my trust and then try the same question another way.

31. The interrogation by the FBI agents lasted for about 2.5 hours. Around 85% to 90% of the questions related to: our client Mr. bin 'Atash; the members of Mr. bin 'Atash's defense team; the work of the defense team; who the client trusted; what specific duties certain team

members performed on the team; how and what defense team members communicated with Mr. bin 'Atash; whether and how Mr. bin 'Atash communicated with the outside world; what views Mr. bin 'Atash and his family held of defense team members; whether and to what extent Mr. bin 'Atash was difficult to work with; and whether and to what extent Mr. bin 'Atash's codefendants were the same or different from Mr. bin 'Atash. The agents wanted to know all sorts of information about the work of the defense team, the personalities of the team members, the communications with Mr. bin 'Atash, my opinions of everyone, and lots of other privileged information.

32. Agent Chris LNU wanted to know about communications between Mr. bin 'Atash and his defense team. They also asked about the other defense teams and the other defendants. At one point, Agent Chris LNU joked that Mr. bin 'Atash "has internet, right?"

33. Agent Chris LNU asked me a bizarre question about "the male attorney in Chicago who sexually assaulted" Mr. bin 'Atash. I said, "What? What are you talking about? There was no male attorney from Chicago, and I've never heard anything about any sexual assault." This question shocked me. The FBI agents said that they had read something in an article about that. I responded I had no idea what they were talking about.

34. The agents complimented me at times saying things like, "all the people I've talked to said great things about you. I wish I had a Sergeant Skeete on my team." They brought up my Defense Meritorious Service Medal a couple of times. Almost every time I would say that I could not answer a question, the agents would bring up something related to my personal life. They even brought up the Marvel Comics movies that I like and asked for my thoughts on Thanos, a Marvel character. This made me uncomfortable because they knew so much about me. My Facebook profile photo is Thanos from Marvel's "The Avengers: Infinity War".

35. At the end of the 2.5 hours, the FBI agents asked Mr. Stafford whether he had any questions. He said no and then it finally ended. Mr. Stafford then told me I had to return the next day for a polygraph.

36. I reported for the polygraph on 21 December 2018 about 1400 CST. I went to the office to the left of the interrogation room in Building 2811. Mr. Stafford escorted me into the office, but did not participate. Two individuals I had never met before were present. One man was self-described "from another government agency" and one other man said he was from Army intelligence. I signed a form acknowledging that I understood I would be subject to a court martial if I lied on the polygraph. I was asked several times whether I had ever lied to my wife; they told me there were "fluctuations" in my polygraph. They asked me whether I have ever falsified a document, broken any traffic laws, had contact with foreigners and done anything on behalf of a foreign government. The two FBI agents who interviewed me on 20 December 2018 were not present in the room as far as I could tell. The polygraph interviewers told me the interview was being recorded.

37. On 20 December 2018, after I was released from the FBI interrogation, I notified Lead Defense Counsel for Mr. bin 'Atash, Ms. Bormann, of the questioning by the FBI. In 2014, as a result of FBI involvement in Mr. Binalshibh's defense team, Judge Pohl issued an order requiring defense team members like me to report such contact and questioning to lead defense counsel. I believe, based upon the questions asked by the FBI agents, that other present or past bin 'Atash defense team members must have provided privileged information to the FBI.

38. This declaration contains what I can remember, to the best of my ability, about being followed on 20 December and the 2.5 hours of questioning by the FBI about Mr. bin 'Atash's defense. I'm sure I left some stuff out because I was not taking notes during the interrogation.

Respectfully submitted,

Brent Skeete 26 Dec 18
Brent Skeete Date

ATTACHMENT C

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
‘ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

AE 615K (KSM)

Mr. Mohammad’s Notice of Objection
to *ex parte* hearing required by AE 615H
INTERIM ORDER

23 January 2019

1. Timeliness:

This Notice of Objection is timely filed.

2. Relief Requested:

Please take notice of Mr. Mohammad’s objection to the unusual *ex parte* hearing required by AE 615H INTERIM ORDER.¹ Mr. Mohammad respectfully requests the military judge to rescind AE 615H insofar as it authorizes an *ex parte* hearing on matters for which the government has not publicly invoked the state secrets or other privilege. Additionally, Mr. Mohammad requests the military judge order the production of a transcript of the portions of the proceeding not necessary to protect classified information.

3. Argument:

On 22 January 2019, the military judge ordered an *ex parte* hearing with Special Trial Counsel to “provide the Commission a robust presentation on the facts and circumstances surrounding the FBI investigation and what additional investigative steps, if any, are contemplated. The presentation will be *ex parte* in nature.” AE 615H at 2. Mr. Mohammad objects to this *ex parte* hearing regarding intrusion into the defense on the basis of the Due Process Clause of the Fifth Amendment, as well as the Sixth and Eighth Amendments, and 10

¹ AE 615H INTERIM ORDER, Defense Motion to Conduct Thorough Inquiry into Actual and/or Potential Attorney Conflict of Interest Pursuant to R.M.C. 901 and *Holloway v. Arkansas*, 435 U.S. 475 (1978) and to Cancel Proceedings Pending Inquiry, 22 January 2019.

U.S.C. § 949p-4(b)(2), and MCRE 505(f)(2)(B). Several of these bases for objection to unbounded *ex parte* proceedings are described in detail in AE 542R² and are again applicable here.

Further, before holding an *ex parte* proceeding on a government claim of privilege, “the trial judge should insist (1) that the formal claim of privilege be made on the public record and (2) that the government either (a) publicly explain in detail the kinds of injury to national security it seeks to avoid and the reason those harms would result from revelation of the requested information or (b) indicate why such an explanation would itself endanger national security.”³ AE 615H denies Mr. Mohammad his right to “as full as possible a public debate over the basis and scope of a privilege claim.”⁴

An *ex parte* proceeding is particularly inappropriate in the context of the AE 615 series in that the crux of the argument is whether *defense counsel* are laboring under a conflict of interest. If they are precluded from learning the essential facts of the conflict, they cannot make an independent determination – as they are ethically and legally required to do – of whether the government intrusion into the workings of the defense team creates a conflict of interest requiring withdrawal.

Additionally, the military judge should order the production of a transcript with redactions only “to the extent necessary to protect classified information.”⁵ In adversarial closed hearings, the military judge in this case routinely orders that “a redacted unclassified,

² AE 542R (KSM), Motion for Appropriate Relief to Amend Order AE 542Q to Comply with the Military Judge’s Duties to Properly Conduct Proceedings Regarding Classified Discovery and Provide a Fair and Public Trial, 17 October 2018.

³ *Ellsberg v. Mitchell*, 709 F.2d 51, 63-64 (D.C. Cir. 1983).

⁴ *Id.* at 63.

⁵ 10 U.S.C. § 949p-4(b)(2).

unofficial/unauthenticated transcript of that session [be] expeditiously prepared and provided to the public in a manner similar to unauthenticated transcripts of open sessions.”⁶ Although no substitute for an adversarial motion, such a procedure would provide Mr. Mohammad some information about the government’s *ex parte* presentation and arguments, and provide some degree of sunlight for Mr. Mohammad into this suddenly-ordered proceeding in his capital case with special prosecutors from which he and his attorneys have been barred, regarding yet additional intrusions into the defense.

4. Oral Argument:

Mr. Mohammad does not request oral argument on this notice.

5. List of Attachments:

A. Certificate of Service

Respectfully submitted,

//s//

DAVID Z. NEVIN
Learned Counsel

//s//

GARY D. SOWARDS
Defense Counsel

//s//

DEREK A. POTEET
LtCol, U.S. Marine Corps
Defense Counsel

//s//

RITA J. RADOSTITZ
Defense Counsel

Counsel for Mr. Mohammad

⁶ AE 404G ORDER Pursuant to Military Commission Rule of Evidence 505(h) and Rule for Military Commissions 806(b)(2), 9 December 2016 .

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 23rd day of January 2019, I electronically filed AE 615K (KSM), Mr. Mohammad's Mr. Mohammad's Notice of Objection to *ex parte* hearing required by AE 615H INTERIM ORDER, with the Chief Clerk of the Military Commissions Trial Judiciary and served the foregoing on all counsel of record by electronic mail.

//s//

DAVID Z. NEVIN
Learned Counsel